

U.S. Serial No. 10/681,979 (Attorney Dkt: HALB:023D1)  
Art Unit: 1712

## REMARKS/ARGUMENTS

### I. General Remarks

Please consider the application in view of the following remarks.

### II. Disposition of Claims

Claims 13-20, 26-34, 36-38, and 40 are pending in this application. In this Response, claims 13, 15-18, 26, 36, and 38 have been canceled and claims 14, 19, 20, 37, and 40 have been amended.

### III. Allowable Subject Matter

Applicant acknowledges with appreciation that the Examiner has indicated that claims 27-34 are allowable over the art of record. Applicant acknowledges further with appreciation that the Examiner has indicated that claim 37, a dependent claim, would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Accordingly, since claim 37 depended from independent claim 13 and intervening dependent claims 15, 16, 17, 18, and 36, Applicant has herein amended claim 37 to include all of the limitations of these claims 13, 15-18 and 36.

Applicant has also amended claims 14 and 19 (and indirectly claim 20) to depend from amended claim 37 instead of claim 13 and has amended claim 40 to depend from amended claim 37 instead of claim 38. Thus, claims 14, 19, 20, and 40 are also believed to be allowable now as dependant on an allowable independent claim.

### IV. Claim Objection

The Examiner objected to claim 20 for using the following informality: "selected from the group comprising" and requested that Applicant use proper Markush language such as "selected from the group consisting of." Applicant has amended claim 20 accordingly.

### V. Rejection of Claims under 35 U.S.C. § 102(b)—Mueller; Reifschneider

The Examiner has rejected claims 13-19, 36, 38, and 40 as anticipated by Mueller (6022833), stating:

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Mueller teaches an invert emulsion fluid which comprises an ester as the continuous phase, a sorbitan monolaurate ester surfactant, a polyoxyethylene glycerolmonococoate surfactant, and calcium chloride as internal phase (see example 7). A fluid loss additive may also be present (see claim 19). Such would inherently possess micelles having a denser concentration in the palisade layer, than that of the emulsion containing either surfactant alone. With respect to claim 38, it is well established that a product by process claim is not distinguished by the product being made by a different process. (citation omitted).

The Examiner has rejected claims 13 and 38-41 as anticipated by Reifschneider (4729967), stating:

Reifschneider teaches a fluid which comprises acetone, sorbitan trioleate and polyoxyethylene sorbitan monolaurate. (See example 6). Such would inherently possess micelles having a denser concentration in the palisade layer, than that of the emulsion containing either surfactant alone, and the specified electrical conductivity effects. Applicants intended use as a drilling fluid does not distinguish (citation omitted).

Applicant appreciates that the Examiner has acknowledged Applicant's previous traverse and response concerning rejections based on these references. The Examiner has indicated that the "similar surfactants would be expected to behave in the same manner as those of the present invention, absent a showing of the applicant to the contrary."

Applicant respectfully traverses the Examiner's rejections for the reasons stated in response to the previous office action. However, Applicant has now deleted the rejected claims or has amended dependent claims to depend from claims the Examiner indicated to be allowable for expedited issuance of a patent. Applicant is uncertain as to when or if he will have time to conduct experiments to provide the Examiner with data further substantiating the differences in the fluids. Thus, notwithstanding Applicant's amendments and cancellations herein, Applicant respectfully reserves the right to pursue and further prosecute the claims rejected by the Examiner in a continuation, divisional, or continuation-in-part application.

#### VI. Rejection of Claims under 35 U.S.C. § 103—Mueller (6022833)

The Examiner rejected claims 13, 19, and 20 as obvious from Mueller (6022833) for the reasons stated above with respect to the Examiner's rejections based on this reference under 35 U.S.C. § 102. The Examiner noted that Mueller differs from Applicant's invention in teaching the specified fluid loss control additives of claim 20. However, the Examiner added that, "such

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additives, especially calcium carbonate are notoriously well known as fluid loss additives in well fluids, and thus use would be obvious . . . .”

Applicant respectfully traverses the Examiner’s rejections for the reasons stated in response to the previous office action. However, as explained above, Applicant has deleted the rejected claims or has amended dependent claims to depend from claims the Examiner indicated to be allowable for expedited issuance of a patent.

#### **V. Rejection of Claims under 35 U.S.C. § 103—Tadros (4875927)**

The Examiner has rejected claims 13-16, 26, 38 and 40 as obvious from Tadros (4875927), stating that “Tadros teaches an invert emulsion fluid which can comprise vegetable oils as the continuous phase (see column 2, lines 41-46). . . .”

Applicant respectfully traverses the Examiner’s rejections for the reasons stated in response to the previous office action. However, as explained above, Applicant has deleted the rejected claims or has amended dependent claims to depend from claims the Examiner indicated to be allowable for expedited issuance of a patent.

#### **CONCLUSION**

Applicant respectfully submits that the references cited by the Examiner lack the requisite identity with Applicant’s invention to anticipate Applicant’s claims. Further, Applicant respectfully submits that the references cited by the Examiner fail to render obvious Applicant’s invention as claimed. Applicant’s reasons for this traverse are set forth in response to the first office action, incorporated herein by reference.


Applicant has deleted the rejected claims or has amended dependent claims to depend from claims the Examiner indicated to be allowable for expedited issuance of a patent. Applicant is uncertain as to when or if he will have time to conduct experiments to provide the Examiner with data further substantiating the differences in the fluids of the invention and the prior art fluids. Thus, notwithstanding Applicant’s amendments and cancellations herein, Applicant respectfully reserves the right to pursue and further prosecute the claims rejected by the Examiner in a continuation, divisional, or continuation-in-part application.

Applicant respectfully submits that the claims as amended are now in condition for allowance and Applicant respectfully requests the Examiner to enter the amendments and to allow the application to proceed to issue.

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Respectfully submitted,

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